IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 16440 of 2001

Between:

D.K.Chander S/o Durgaiah
R/o H.No.46, Near Saraswathi Junior College,
Mandamarri, Adilabad District.

..... PETITIONER

AND

1 The Industrial Tribunal-cum-Labour Court, Rep. by its Chairman, Godavarikhani.
2 The Depot Manager, A.P.S.R.T.C. Huzurabad Depot, Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or a direction more particularly one in the nature of Writ of Certiorari after calling for the records in I.D.No.148/99 on the file of the Industrial Tribunal-cum-Labour Court, Godavarikhani and quash the Award dt. 12-4-2001 in I.D.No.148/99 and consequently direct the respondent-Corporation to reinstate the petitioner into service with all consequential benefits.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondent no.1: G.P. for Labour.

Counsel for the Respondent No.2: Ms. P.Rajani Reddy, S.C. for R.2.

The Court made the following :

O R D E R :

Heard Sri G.Vidyasagar, learned counsel for the petitioner and Ms. P.Rajani Reddy, learned standing counsel appearing on behalf of the second respondent.

The petitioner, who has been working as a Driver with the second respondent-corporation, filed this Writ Petition, *inter alia*, seeking to assail the nil award passed in I.D. No. 148 of 1999 dated 12.04.2001 on the file of the first respondent.

The case of the petitioner, in brief, is that he joined as Driver with the second respondent-corporation in the year 1987 and subsequently, his services were regularised in the said post from 01.03.1989. However, while he was driving on route from Vavilala to Hyderabad, on 03.02.1992, it was alleged that he was found in drunken state and whereupon a charge sheet was issued on 12.02.1992, for which he submitted his explanation on 02.03.1992. Subsequently, an enquiry was conducted after issuing notice and on the basis of report of the enquiry officer, the petitioner was removed from service on 20.06.1992. Appeal and Review filed by the petitioner were dismissed. Thereafter, a reference was made to the first respondent, who confirmed the removal order. Hence, the Writ Petition.

The main submission made by Sri G.Vidyasagar, the learned counsel appearing for the petitioner is that in respect of the very same inspection, the petitioner was also prosecuted in S.T.C. No. 64 of 1992 on the file of the Judicial Magistrate of First Class, Huzurabad, wherein though the Doctor who had issued medical certificate, was examined, it was not accepted, and ultimately, the petitioner was

acquitted as per the judgment dated 29.01.1993. However, in the present case, during enquiry, neither the Doctor nor any other person, was examined in its support. Having regard to the same, a finding on the validity of the domestic enquiry ought to have been given by the first respondent, otherwise the entire procedure as adopted by the first respondent in considering the petitioner's case is wholly contrary to the mandate as prescribed under the provisions of the Industrial Disputes Act.

The learned standing counsel appearing on behalf of the second respondent sought to sustain the impugned order on the ground that it is only on the basis of the allegations made and the material as available, the petitioner was rightly removed from service.

Having heard the submissions made and on perusal of the material, the question which falls for consideration is as to whether the award as passed by the first respondent in regard to removal of petitioner from service, is sustainable ?

There is no dispute to the fact that the petitioner was working as Driver and the inspection, which occurred on 03.02.1992 whereupon certain charges are framed against him, and after holding enquiry, he was removed from service. The main allegation made against him was that he was found in drunken state and in support, during enquiry, the second respondent-corporation sought place reliance on the certificate issued by Medical Officer, Jammikunta. Simultaneously, the petitioner was also prosecuted in S.T.C. No.64 of 1992 on the file of the Judicial Magistrate of First Class, Huzurabad, wherein the petitioner herein was acquitted though the concerned Medical Officer examined.

On perusal of the entire award passed by the first respondent in this

case, it is seen that there is absolutely no proper approach made therein in regard to validity of domestic enquiry. As laid down in *The Cooper Enginnering Ltd., v. P.P.Mundhe*, it is mandatory on the part of the Labour Court to give a preliminary finding as to the validity of the domestic enquiry. In the event the domestic enquiry is held to be valid, the question arises as to the quantum of punishment viz. gravity of the offence. However, where it is found that the domestic enquiry is vitiated, necessarily the management has to prove the charges by independent evidence without taking any recourse to or placing any reliance on, the enquiry proceedings. In this case, there is neither any such finding preliminarily in regard to the validity of the domestic enquiry nor there is any evidence let in orally in support of the documents as sought to be marked. In view of the same, the matter requires to be reconsidered afresh on merits.

The Writ Petition is, accordingly, allowed, setting aside the impugned award dated 12.04.2001 passed by the first respondent. The matter is remitted back to the first respondent for fresh enquiry and disposal on merits in accordance with law after giving notice and opportunity to both the sides. On receipt of papers, the first respondent shall dispose of the matter within a period of two months thereafter. No costs.

(B.Prakash Rao, J.)

09.02.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on

Wednesday, the ninth day of February two thousand and five.

… Registrar

Copy to:

1 The Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani.
2 The Depot Manager, A.P.S.R.T.C., Huzurabad Depot, Karimnagar District.

3 Two CCs to the G.P. for Labour, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

4 Two CD copies.

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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